

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK D. NILSON,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:18-cv-908

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration. 42 U.S.C. § 405(g). Defendant filed a motion to dismiss the appeal as time-barred (ECF No. 5). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that this Court grant Defendant's motion to dismiss. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (ECF No. 12), arguing that the Court should equitably toll the limitations period because his attorney effectively abandoned his case. Defendant filed a response to the objections (ECF No. 13). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the R & R to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff argues that the Magistrate Judge failed to properly consider his circumstances in determining that the conduct of Plaintiff's attorney in failing to file a timely appeal should not be attributed to Plaintiff. The Court is not so persuaded. Here, as Defendant points out, the Magistrate Judge properly concluded that Plaintiff has failed to show extraordinary circumstances that warrant

equitable tolling (*see* R&R, ECF No. 11 at PageID.73), that is, exceptional circumstances beyond the mere negligence or mistake of his counsel. The cases cited by Plaintiff are inapposite.

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 12) are DENIED, and the Report and Recommendation of the Magistrate Judge (ECF No. 11) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (ECF No. 5) is GRANTED, and this action is terminated.

A Judgment will be entered consistent with this Opinion and Order.

Dated: June 3, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge